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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**DWAYNE J. DENNIS and HAZEL R.D.  
DENNIS,**

**PLAINTIFFS,**

v.

**JP MORGAN CHASE BANK,**

**DEFENDANT.**

Case No. 3:18-cv-00555-YY

**DEFENDANT’S RESPONSE TO  
“VERIFIED EMERGENCY PETITION  
FOR TEMPORARY RESTRAINING  
ORDER AND/OR PRELIMINARY  
INJUNCTION, AND DECLARATORY  
RELIEF” AND TO “LIS PENDEN”**

Plaintiffs’ “Verified Emergency Petition for Temporary Restraining Order And/Or Preliminary Injunction, and Declaratory Relief” (Dkt. No. 35) (“Plaintiffs’ Motion”) seeks a

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temporary restraining order and preliminary injunction enjoining the foreclosure sale of their property pursuant to a General Judgment of Foreclosure obtained after a trial on the merits in Oregon state court. The Court should deny Plaintiffs' Motion for the reasons stated in Defendant's Response to Plaintiffs' "Motion to Order to Stop, the Wrongful Foreclosure Sale of Our Home and a Motion to Quiet Our Title" and Opposition to Preliminary Injunction (Dkt. No. 34) and Defendant's Motion to Dismiss Amended Complaint (Dkt. No. 31), Declaration of Kevin H. Kono in Support of Motion to Dismiss Amended Complaint ("Kono MTD Decl.") (Dkt. No. 32), and Request for Judicial Notice (Dkt. No. 33), all of which defendant JPMorgan Chase Bank, NA (erroneously sued as "JP Morgan Chase Bank") ("Chase") incorporates by this reference as if fully set forth herein.

As set forth in that briefing, the Court should dissolve the Temporary Restraining Order it entered *ex parte* and deny any further injunctive relief because:

**First**, Plaintiffs have no likelihood of prevailing on the merits because Chase's right to foreclose has been established through a judicial foreclosure suit in the Circuit Court for the State of Oregon for the County of Multnomah, Case Number 16CV12141 ("State Foreclosure Lawsuit") that resulted in a General Judgment of Foreclosure. Plaintiffs contested Chase's right to foreclose all the way through trial in state court and lost. Plaintiffs did not appeal. In Plaintiffs' Motion, Plaintiffs reiterate the arguments and objections they raised in the State Foreclosure Lawsuit and notwithstanding which the state court entered judgment. Kono Decl., Ex. 6. There are no merits left to determine.

**Second**, Plaintiffs are not entitled to an injunction interfering with execution of the state court foreclosure judgment because both the *Rooker-Feldman* doctrine and the Anti-injunction Act, 28 U.S.C.A. § 2283, prohibit a federal court from interfering with state court proceedings.

Under *Rooker-Feldman*, this Court *lacks jurisdiction* to judge whether the state court got it right. There is no basis for this Court to enjoin the pending foreclosure.<sup>1</sup>

***Third, the court that issued the General Judgment of Foreclosure—the proper court to consider whether to restrain enforcement of its own judgment—has heard and rejected Plaintiffs’ attempt in state court to obtain a temporary restraining order.*** Plaintiffs apparently filed a motion for a temporary restraining order in the State Foreclosure Lawsuit. On July 31, 2018, the judge who signed the General Judgment of Foreclosure, Judge Marilyn E. Litzenberger, signed an Order Denying Defendants’ Motion for Temporary Restraining Order. Declaration of Kevin H. Kono in Support of Response to “Verified Emergency Petition for Temporary Restraining Order And/Or Preliminary Injunction, and Declaratory Relief” (“Kono Decl.”), Ex. 1. In her order, Judge Litzenberger noted that “[t]he underlying foreclosure lawsuit was resolved following a jury verdict dated June 20, 2017. A General Judgment of Foreclosure was entered thereafter on April 6, 2018, after the court ruled on Defendants’ post-trial motions and other submissions.” Kono Decl., Ex. 1, p. 1. Judge Litzenberger found not only that Plaintiffs (“Defendants” in the State Foreclosure Lawsuit) had failed to provide adequate notice, but also that Plaintiffs had not met their burden under ORCP 79 B(1)(a) to show irreparable injury before proper notice could be given (*i.e.*, the pendency of a foreclosure sale standing alone is insufficient to show irreparable injury). Kono Decl., Ex. 1, p. 2. Plaintiffs’ state court efforts and Judge Litzenberger’s response show that (1) Plaintiffs are seeking to overturn or interfere

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<sup>1</sup> Plaintiffs attach an “Affidavit of Fraud/Forgery” to their “Lis Penden” filing. Dkt. No. 39, p. 5. The allegations in that document are materially identical to the allegations in Plaintiffs’ Answer and Affirmative Defenses in the State Foreclosure Lawsuit. *Compare* Dkt. No. 39, p. 5 *with* Kono MTD Decl., Ex. 6, pp. 2-3. Where, as here, alleged fraud “has previously been raised and adjudicated in state court,” *Rooker-Feldman* applies. *Santoro v. Ocwen Loan Servicing, LLC*, 2017 WL 6501860, at \*3-4 (D. Or. Dec. 18, 2017) (“*Rooker-Feldman* does apply where the parties in the state proceeding raised the issue that forms the basis of the alleged extrinsic fraud[.]”); *see also Rossi v. Garrison*, 2016 WL 3003209, at \*2 (D. Or. Mar. 22, 2016) (noting allegations of “the use of fabricated evidence” do not remove an action from *Rooker-Feldman* (citation omitted)).

with the General Judgment of Foreclosure in the State Foreclosure Lawsuit—exactly what *Rooker-Feldman* bars a federal court from allowing; (2) Plaintiffs know how to go to state court to seek the relief they improperly ask this Court to grant; (3) Judge Litzenberger understands Plaintiffs are seeking to attack the General Judgment of Foreclosure she entered; and (4) Judge Litzenberger stands ready and available to determine whether a sale pursuant to her duly entered General Judgment of Foreclosure should go forward. That is the province of the state court, not this Court.

For the foregoing reasons and the reasons stated in the briefing Chase incorporates, the Court should dissolve the Temporary Restraining Order and deny Plaintiffs' Motion and any injunctive relief.

DATED this 31st day of July, 2018.

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By s/ Kevin H. Kono

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **DEFENDANT'S RESPONSE TO "VERIFIED EMERGENCY PETITION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION, AND DECLARATORY RELIEF" AND TO "LIS PENDEN"** on:

Dwayne J. Dennis  
Hazel R.D. Dennis  
3735 N. Vancouver Ave  
Portland, OR 97227  
Telephone (503) 282-3154

Plaintiffs

☐ by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to said plaintiffs' last-known address and deposited in the U.S. mail at Portland, Oregon on the date set forth below;

☐ by causing a copy thereof to be hand-delivered to said plaintiffs' address as shown above on the date set forth below;

☒ by sending a copy thereof via overnight courier in a sealed, prepaid envelope, addressed to said plaintiffs' last-known address on the date set forth below;

☐ by faxing a copy thereof to said plaintiffs at their last-known facsimile number on the date set forth below;

☐ by emailing a copy thereof to said plaintiffs at their last-known email address as set forth above; and/or

☐ by emailing a copy thereof in Word format to said plaintiffs at their last-known email address as set forth above, pursuant to Local Rule 5-11(b).

Dated this 31st day of July, 2018.

DAVIS WRIGHT TREMAINE LLP

By s/ Kevin H. Kono

Kevin H. Kono, OSB #023528  
Tim Cunningham, OSB #100906  
Of Attorneys for Defendant